

# News from Ed Markey

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CONTACT: Tara McGuinness

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(202) 225-2836

## **NORTH KOREA'S REQUEST FOR NUCLEAR COOPERATION BARRED BY ENERGY BILL EXPORTS PROVISION**

*Cox-Markey Amendments Affect both U.S. Exports and Re-Exports or Re-Transfers of  
U.S.-Origin Nuclear Materials and Technology*

**Washington, D.C.** – As negotiations on North Korea's nuclear weapons program resumed today in Beijing, North Korea continued to insist on its right to civilian atomic technology, despite the fact that cooperation on this technology from the U.S. and U.S.-origin technology from South Korea and Japan is barred by recent changes in U.S. law. Two little noticed provisions of the recently passed Energy Policy Act of 2005 (EPACT 2005) outlaw virtually all forms of nuclear trade and cooperation between the U.S. and countries like North Korea and Iran, according to Representative Edward J. Markey (D-MA), who coauthored the provisions along with former Rep. Christopher Cox (R-CA), the current Chairman of the Securities and Exchange Commission. The Cox-Markey amendments affect both U.S. exports of nuclear materials and technology, as well as re-exports and re-transfers of U.S.-origin materials and technology.

**“The purpose of this new law is to erect the strongest possible legal barriers in U.S. law to any attempt to revive plans to build two light water reactors in North Korea,”** said Rep. Markey.

Rep. Markey explained, **“The new law bars virtually all forms of nuclear trade with countries who are on the list of state sponsors of terrorism, which includes both North Korea and Iran. Not only are direct U.S. exports and transfers covered, but also any re-transfers of U.S.-origin technology by countries such as South Korea, Japan, or the European Community. In addition, the federal government is permanently barred from offering any legal indemnification to companies participating in nuclear projects in these countries.”**

Rep. Markey, along with former Rep. Christopher Cox (D-CA) – who President Bush recently appointed to serve as Chairman of the Securities and Exchange Commission – waged a six year battle to enact legal restrictions on nuclear trade with North Korea. This effort was prompted by provisions of the 1994 Agreed Framework on Nuclear Cooperation with North Korea that would have allowed two light water reactors to be supplied to North Korea as part of the Agreement. Reps. Markey and Cox long argued that North Korea could not be trusted with such technology in light of its nonproliferation record, and fought to establish legal restrictions on such trade. Their efforts culminated in enactment of Sections 632 and 635 of EPACT 2005, which President Bush signed into law on August 8, 2005.

Under Section 632 of the new law, no nuclear materials and equipment, sensitive nuclear technology, or nuclear-related items “shall be exported or reexported, or transferred or retransferred whether directly or indirectly, and no Federal agency shall issue any license, approval, or authorization for the export or

reexport, or transfer, or retransfer, whether directly or indirectly, of these items or assistance” to “any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities.” The restriction can only be lifted if the President removes the country from the list of state sponsors of terrorism, or, if the President determines and certifies to Congress that a waiver of the provision “will not result in any increased risk that the country receiving the waiver will acquire nuclear weapons, nuclear reactors, or any materials or components of nuclear weapons and: 1) “the country in question has not during the preceding 12-month period willfully aided or abetted the international proliferation of nuclear explosive devices;” 2) “the government of such country has provided adequate verifiable assurances that it will cease its support for acts of international terrorism;” 3) the waiver “is in the vital national security interest of the United States;” or 4) such waiver “is essential to prevent or respond to a serious radiological hazard in the country...that may or does threaten public health and safety.”

A second restriction, set forth in Section 635 of the Act, prohibits the federal government from entering into any contract or arrangement “the purpose or effect of which would be to directly or indirectly impose liability on the United States Government” or “otherwise directly or indirectly require an indemnity by the United States Government, for nuclear incidents occurring in connection with the design, construction, or operation of” a nuclear facility in any country which had been identified as a state sponsor of terrorism as of September 11, 2001. This provision cannot be waived, and would remain in effect even if the affected country should someday be removed from the list of state sponsors of terrorism. The only exception provided to the prohibition is one limited to incidents occurring as results of missions carried out by the U.S. government “that are necessary to safely secure, store, transport, or remove nuclear materials” from the affected countries.

Rep. Markey concluded, **“While North Korea reportedly is still arguing for a right to have a civilian nuclear program that is an “agreement acceptable to all parties” the reality is that under the Cox-Markey amendments, neither the U.S. can supply them with nuclear materials and technology, nor can the South Koreans and the Japanese supply them with such technology (since both countries’ nuclear programs rely on U.S.-origin technology). Since North Korea is unlikely to be removed from the list of state sponsors of terrorism, and since it would be extraordinarily difficult for the President to meet the conditions for a waiver, this option is pretty effectively foreclosed. Let me put this simply: North Korea’s request for nuclear cooperation from the U.S., South Korea or Japan is illegal under U.S. law and extremely dangerous considering that just today we have received more confirmation from Pakistan that North Korea obtained nuclear weapons technology from a Pakistani scientist.”**

For more on Rep. Markey’s work on non-proliferation <http://www.house.gov/markey/>